

General Provisions--Department of Commerce

Sec. 201. During the current fiscal year, applicable appropriations and funds made available to the Department of Commerce by this Act shall be available for the activities specified in the Act of October 26, 1949 (15 U.S.C. 1514), to the extent and in the manner prescribed by the Act, and, notwithstanding 31 U.S.C. 3324, may be used for advanced payments not otherwise authorized only upon the certification of officials designated by the Secretary of Commerce that such payments are in the public interest.

Sec. 202. During the current fiscal year, appropriations made available to the Department of Commerce by this Act for salaries and expenses shall be available for hire of passenger motor vehicles as authorized by 31 U.S.C. 1343 and 1344; services as authorized by 5 U.S.C. 3109; and uniforms or allowances therefor, as authorized by law (5 U.S.C. 5901-5902).

Sec. 203. None of the funds made available by this Act may be used to support the hurricane reconnaissance aircraft and activities that are under the control of the United States Air Force or the United States Air Force Reserve.

Sec. 204. <<NOTE: 13 USC 23 note.>> None of the funds provided in this or any previous Act, or hereinafter made available to the Department of Commerce, shall be available to reimburse the Unemployment Trust Fund or any other fund or account of the Treasury to pay for any expenses paid before October 1, 1992, as authorized by section 8501 of title 5, United States Code, for services performed after April 20, 1990, by individuals appointed to temporary positions within the Bureau [[Page 111 STAT. 2480]] of the Census for purposes relating to the 1990 decennial census of population.

Sec. 205. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Commerce in this Act may be transferred between such appropriations, but no such appropriation shall be increased by more than 10 percent by any such transfers: Provided, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

Sec. 206. (a) Should legislation be enacted to dismantle or reorganize the Department of Commerce, or any portion thereof, the Secretary of Commerce, no later than 90 days thereafter, shall submit to the Committees on Appropriations of the House and the Senate a plan for transferring funds provided in this Act to the appropriate successor organizations: Provided, That the plan shall include a proposal for transferring or rescinding funds appropriated herein for agencies or programs terminated under such legislation: Provided further, That such plan shall be transmitted in accordance with section 605 of this Act.

(b) The Secretary of Commerce or the appropriate head of any successor organization(s) may use any available funds to carry out legislation dismantling or reorganizing the Department of Commerce, or any portion thereof, to cover the costs of actions relating to the abolishment, reorganization, or transfer of functions and any related personnel action, including voluntary separation incentives if authorized by such legislation: Provided, That the authority to transfer funds between appropriations accounts that may be necessary to carry out this section is provided in addition to authorities included under section 205 of this Act: Provided further, That use of funds to carry out this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

Sec. 207. Any costs incurred by a department or agency funded under this title resulting from personnel actions taken in response

to funding reductions included in this title or from actions taken for the care and protection of loan collateral or grant property shall be absorbed within the total budgetary resources available to such department or agency:

Provided, That the authority to transfer funds between appropriations accounts as may be necessary to carry out this section is provided in addition to authorities included elsewhere in this Act: Provided further, That use of funds to carry out this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

Sec. 208. The Secretary of Commerce may award contracts for hydrographic, geodetic, and photogrammetric surveying and mapping services in accordance with title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.).

Sec. 209. <<NOTE: 13 USC 141 note.>> (a) Congress finds that--

(1) it is the constitutional duty of the Congress to ensure that the decennial enumeration of the population is conducted in a manner consistent with the Constitution and laws of the United States;

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(2) the sole constitutional purpose of the decennial enumeration of the population is the apportionment of Representatives in Congress among the several States;

(3) section 2 of the 14th article of amendment to the Constitution clearly states that Representatives are to be ``apportioned among the several States according to their respective numbers, counting the whole number of persons in each State";

(4) article I, section 2, clause 3 of the Constitution clearly requires an "actual Enumeration" of the population, and section 195 of title 13, United States Code, clearly provides "Except for the determination of population for purposes of apportionment of Representatives in Congress among the several States, the Secretary shall, if he considers it feasible, authorize the use of the statistical method known as 'sampling' in carrying out the provisions of this title.";

(5) the decennial enumeration of the population is one of the most critical constitutional functions our Federal Government performs;

(6) it is essential that the decennial enumeration of the population be as accurate as possible, consistent with the Constitution and laws of the United States;

(7) the use of statistical sampling or statistical adjustment in conjunction with an actual enumeration to carry out the census with respect to any segment of the population poses the risk of an inaccurate, invalid, and unconstitutional census;

(8) the decennial enumeration of the population is a complex and vast undertaking, and if such enumeration is conducted in a manner that does not comply with the requirements of the Constitution or laws of the United States, it would be impracticable for the States to obtain, and the courts of the United States to provide, meaningful relief after such enumeration has been conducted; and

(9) Congress is committed to providing the level of funding that is required to perform the entire range of constitutional census activities, with a particular emphasis on accurately enumerating all individuals who have historically been undercounted, and toward this end, Congress expects--

(A) aggressive and innovative promotion and outreach campaigns in hard-to-count communities;

(B) the hiring of enumerators from within those communities;

(C) continued cooperation with local government on address list development; and

(D) maximized census employment opportunities for individuals seeking to make the transition from welfare to work.

(b) Any person aggrieved by the use of any statistical method in violation of the Constitution or any provision of law (other than this Act), in connection with the 2000 or any later decennial census, to determine the population for purposes of the apportionment or redistricting of Members in Congress, may in a civil action obtain declaratory, injunctive, and any other appropriate relief against the use of such method.

(c) For purposes of this section--

(1) the use of any statistical method as part of a dress rehearsal or other simulation of a census in preparation for [[Page 111 STAT. 2482]] the use of such method, in a decennial census, to determine the population for purposes of the apportionment or redistricting of Members in Congress shall be considered the use of such method in connection with that census; and

(2) the report ordered by title VIII of Public Law 105-18 and the Census 2000 Operational Plan shall be deemed to constitute final agency action regarding the use of statistical methods in the 2000 decennial census, thus making the question of their use in such census sufficiently concrete and final to now be reviewable in a judicial proceeding.

(d) For purposes of this section, an aggrieved person (described in subsection (b)) includes--

(1) any resident of a State whose congressional representation or district could be changed as a result of the use of a statistical method challenged in the civil action;

(2) any Representative or Senator in Congress; and

(3) either House of Congress.

(e)(1) Any action brought under this section shall be heard and determined by a district court of three judges in accordance with section 2284 of title 28, United States Code. The chief judge of the United States court of appeals for each circuit shall, to the extent practicable and consistent with the avoidance of unnecessary delay, consolidate, for all purposes, in one district court within that circuit, all actions pending in that circuit under this section. Any party to an action under this section shall be precluded from seeking any consolidation of that action other than is provided in this paragraph. In selecting the district court in which to consolidate such actions, the chief judge shall consider the convenience of the parties and witnesses and efficient conduct of such actions. Any final order or injunction of a United States district court that is issued pursuant to an action brought under this section shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under this section may be issued by a single Justice of the Supreme Court.

(2) It shall be the duty of a United States district court hearing an action brought under this section and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any such matter.

(f) Any agency or entity within the executive branch having authority with respect to the carrying out of a decennial census may in a civil action obtain a declaratory judgment respecting whether or not for the purposes of the apportionment or redistricting of Members in Congress is forbidden by the Constitution and laws of the United States.

(g) The Speaker of the House of Representatives or the Speaker's designee or designees may commence or join in a civil action, for and on behalf of the House of Representatives, under any

applicable law, to prevent the use of any statistical method, in connection with the decennial census, to determine the population for purposes of the apportionment or redistricting of Members in Congress. It shall be the duty of the Office of the General Counsel of the House of Representatives to represent the House in such [[Page 111 STAT. 2483]] civil action, according to the directions of the Speaker. The Office of the General Counsel of the House of Representatives may employ the services of outside counsel and other experts for this purpose.

(h) For purposes of this section and section 210--

(1) the term "statistical method" means an activity related to the design, planning, testing, or implementation of the use of representative sampling, or any other statistical procedure, including statistical adjustment, to add or subtract counts to or from the enumeration of the population as a result of statistical inference; and

(2) the term "census" or "decennial census" means a decennial enumeration of the population.

(i) Nothing in this Act shall be construed to authorize the use of any statistical method, in connection with a decennial census, for the apportionment or redistricting of Members in Congress.

(j) Sufficient funds appropriated under this Act or under any other purposes of the 2000 decennial census shall be used by the Bureau of the Census to plan, test, and become prepared to implement a 2000 decennial census, without using statistical methods, which shall result in the percentage of the total population actually enumerated being as close to 100 percent as possible. In both the 2000 decennial census, and any dress rehearsal or other simulation made in preparation for the 2000 decennial census, the number of persons enumerated without using statistical methods must be publicly available for all levels of census geography which are being released by the Bureau of the Census

for: (1) all data releases before January 1, 2001; (2) the data

contained in the 2000 decennial census Public Law 94-171 data file released for use in redistricting; (3) the Summary Tabulation File One (STF-1) for the 2000 decennial census; and (4) the official populations of the States transmitted from the Secretary of Commerce through the President to the Clerk of the House used to reapportion the districts of the House among the States as a result of the 2000 decennial census. <<NOTE: Public information. Internet.>> Simultaneously with any other release or reporting of any of the information described in the preceding sentence through other means, such information shall be made available to the public on the Internet. These files of the Bureau of the Census shall be available concurrently to the release of the original files to the same recipients, on identical media, and at a comparable price. They shall contain the number of persons enumerated without using statistical methods and any additions or subtractions thereto. These files shall be based on data gathered and generated by the Bureau of the Census in its official capacity.

(k) This section shall apply in fiscal year 1998 and succeeding fiscal years.

Sec. 210. <<NOTE: Establishment. 13 USC 141 note.>> (a) There shall be established a board to be known as the Census Monitoring Board (hereafter in this section referred to as the ``Board").

(b) The function of the Board shall be to observe and monitor all aspects of the preparation and implementation of the 2000 decennial census (including all dress rehearsals and other simulations of a census in preparation therefor).

(c)(1) The Board shall be composed of 8 members as follows:

(A) Two individuals appointed by the majority leader of the Senate.

(B) Two individuals appointed by the Speaker of the House of Representatives.

<<NOTE: President.>> (C) Four individuals appointed by the President, of whom--

- (i) one shall be on the recommendation of the minority leader of the Senate; and
- (ii) one shall be on the recommendation of the minority leader of the House of Representatives.

All members of the Board shall be appointed within 60 days after the date of enactment of this Act. A vacancy in the Board shall be filled in the manner in which the original appointment was made.

(2) Members shall not be entitled to any pay by reason of their service on the Board, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(3) The Board shall have--

- (A) a co-chairman who shall be appointed jointly by the members under subsection (c)(1)(A) and (B), and
- (B) a co-chairman who shall be appointed jointly by the members under subsection (c)(1)(C).

(4) The Board shall meet at the call of either co-chairman.

(5) A quorum shall consist of five members of the Board.

(6) The Board may promulgate any regulations necessary to carry out its duties.

(d)(1) The Board shall have--

- (A) an executive director who shall be appointed jointly by the members under subsection (c)(1)(A) and (B), and
- (B) an executive director who shall be appointed jointly by the members under subsection (c)(1)(C), each of whom shall be paid at a rate not to exceed level IV of the Executive Schedule.

(2) Subject to such rules as the Board may prescribe, each executive director--

(A) may appoint and fix the pay of such additional personnel as that executive director considers appropriate; and

(B) may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of pay payable for grade GS-15 of the General Schedule. Such rules shall include provisions to ensure an equitable division or sharing of resources, as appropriate, between the respective staff of the Board.

(3) The staff of the Board shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates).

(4) The Administrator of the General Services Administration, in coordination with the Secretary of Commerce, shall locate suitable office space for the operation of the Board in the W. Edwards Deming Building in Suitland, Maryland. The facilities shall serve as the headquarters of the Board and shall include all necessary equipment and incidentals required for the proper functioning of the Board.

(e)(1) For the purpose of carrying out its duties, the Board may hold such hearings (at the call of either co-chairman) and [[Page 111 STAT. 2485]] undertake such other activities as the Board determines to be necessary to carry out its duties.

(2) The Board may authorize any member of the Board or of its staff to take any action which the Board is authorized to take by this subsection.

(3)(A) Each co-chairman of the Board and any members of the staff who may be designated by the Board under this paragraph shall be granted access to any data, files, information, or other matters maintained by the Bureau of the Census (or received by it in the course of conducting a decennial census of population)

which they may request, subject to such regulations as the Board may prescribe in consultation with the Secretary of Commerce.

(B) The Board or the co-chairmen acting jointly may secure directly from any other Federal agency, including the White House, all information that the Board considers necessary to enable the Board to carry out its duties. Upon request of the Board or both co-chairmen, the head of that agency (or other person duly designated for purposes of this paragraph) shall furnish that information to the Board.

(4) The Board <<NOTE: Regulations.>> shall prescribe regulations under which any member of the Board or of its staff, and any person whose services are procured under subsection (d)(2)(B), who gains access to any information or other matter pursuant to this subsection shall, to the extent that any provisions of section 9 or 214 of title 13, United States Code, would apply with respect to such matter in the case of an employee of the Department of Commerce, be subject to such provisions.

(5) Upon the request of the Board, the head of any Federal agency is authorized to detail, without reimbursement, any of the personnel of such agency to the Board to assist the Board in carrying out its duties. Any such detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(6) Upon the request of the Board, the head of a Federal agency shall provide such technical assistance to the Board as the Board determines to be necessary to carry out its duties.

(7) The Board may use the United States mails in the same manner and under the same conditions as Federal agencies and shall, for purposes of the frank, be considered a commission of Congress as described in section 3215 of title 39, United States Code.

(8) Upon request of the Board, the Administrator of General Services shall provide to the Board on a reimbursable basis such administrative support services as the Board may request.

(9) For purposes of costs relating to printing and binding, including the cost of personnel detailed from the Government Printing Office, the Board shall be deemed to be a committee of the Congress.

(f)(1) The <<NOTE: Reports.>> Board shall transmit to the Congress--

(A) interim reports, with the first such report due by April 1, 1998;

(B) additional reports, the first of which shall be due by February 1, 1999, the second of which shall be due by April 1, 1999, and subsequent reports at least semiannually thereafter;

(C) a final report which shall be due by September 1, 2001; and [[Page 111 STAT. 2486]]

(D) any other reports which the Board considers appropriate.

The final report shall contain a detailed statement of the findings and conclusions of the Board with respect to the matters described in subsection (b).

(2) In addition to any matter otherwise required under this subsection, each such report shall address, with respect to the period covered by such report--

(A) the degree to which efforts of the Bureau of the Census to prepare to conduct the 2000 census--

(i) shall achieve maximum possible accuracy at every level of geography;

(ii) shall be taken by means of an enumeration process designed to count every individual possible; and

(iii) shall be free from political bias and arbitrary decisions; and

(B) efforts by the Bureau of the Census intended to contribute to enumeration improvement, specifically, in connection with--

(i) computer modernization and the appropriate use of automation;

- (ii) address list development;
- (iii) outreach and promotion efforts at all levels designed to maximize response rates, especially among groups that have historically been undercounted (including measures undertaken in conjunction with local government and community and other groups);
- (iv) establishment and operation of field offices;
- and
- (v) efforts relating to the recruitment, hiring, and training of enumerators.

(3) Any data or other information obtained by the Board under this section shall be made available to any committee or subcommittee of Congress of appropriate jurisdiction upon request of the chairman or ranking minority member of such committee or subcommittee. No such committee or subcommittee, or member thereof, shall disclose any information obtained under this paragraph which is submitted to it on a confidential basis unless the full committee determines that the withholding of that information is contrary to the national interest.

(4) The Board shall study and submit to Congress, as part of its first report under paragraph (1)(A), its findings and recommendations as to the feasibility and desirability of using postal personnel or private contractors to help carry out the decennial census.

(g) There is authorized to be appropriated \$4,000,000 for each of fiscal years 1998 through 2001 to carry out this section.

(h) To the extent practicable, members of the Board shall work to promote the most accurate and complete census possible by using their positions to publicize the need for full and timely responses to census questionnaires.

(i)(1) No individual described in paragraph (2) shall be eligible--

(A) to be appointed or to continue serving as a member of the Board or as a member of the staff thereof; or

(B) to enter into any contract with the Board.

(2) This <<NOTE: Applicability.>> subsection applies with respect to any individual who is serving or who has ever served--

- (A) as the Director of the Census; or [Page 111 STAT. 2487]
- (B) with any committee or subcommittee of either House of Congress, having jurisdiction over any aspect of the decennial census, as--
 - (i) a Member of Congress; or
 - (ii) a congressional employee.

(j) The <<NOTE: Termination date.>> Board shall cease to exist on September 30, 2001.

(k) Section 9(a) of title 13, United States Code, is amended in the inserting "of this title or section 210 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations" Act, 1998--".

Sec. 211. (a) Section 401 of title 22, United States Code, is amended--

(1) in subsection (a), by adding after the first sentence the following: "The Secretary of Commerce may seize and detain any commodity (other than arms or munitions of war) or technology which is intended to be or is being exported in violation of laws governing such exports and may seize and detain any vessel, vehicle, or aircraft containing the same or which has been used or is being used in exporting or attempting to export such articles."; and

(2) in subsection (b), by adding after "and not inconsistent with the provisions hereof." the following:

"However, with respect to seizures and forfeitures of property under this section by the Secretary of Commerce, such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the

customs law may be performed by such officers as are designated by the Secretary of Commerce or, upon the request of the Secretary of Commerce, by any other agency that has authority to manage and dispose of seized property."

(b) Section 524(c)(11)(B) of title 28, United States Code, is amended by adding at the end thereof ``or pursuant to the authority of the Secretary of Commerce".

Sec. 212. Notwithstanding any other provision of law, the Economic Development Administration is directed to transfer funds obligated and awarded to the Butte-Silver Bow Consolidated Local Government as Project Number 05-01-02822 to the Butte Local Development Corporation Revolving Loan Fund to be administered by the Butte Local Development Corporation, such funds to remain available until expended. In accordance with section 1557 of title 31, United States Code, funds obligated and awarded in fiscal year 1994 under the heading ``Economic Development Administration-Economic Development Assistance Programs" for Metropolitan Dade County, Florida, and subsequently transferred to Miami-Dade Community College for Project No. 04-49-04021 shall be exempt from subchapter IV of chapter 15 of such title and shall remain available for expenditure without fiscal year limitation.

This title may be cited as the "Department of Commerce and Related Agencies Appropriations Act, 1998".